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Office of Policy and Legal Analysis

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OPLA~Notes

Nonpartisan Quarterly Newsletter

October 1997

*Publication of the Office of Policy and Legal Analysis
for the Maine State Legislature*

Volume 1, Issue 1

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Newsletter Greetings

Welcome to the third issue of OPLA~Notes, a quarterly publication of the Legislature's nonpartisan Office of Policy and Legal Analysis. This edition of OPLA~Notes, includes articles on the Government Evaluation Act, the U.S. District Court decision on the "Scarlet Letter" election law and provides useful Internet sites, an update on bill statistics for the First Regular and First Special Sessions of the 118th Legislature and a listing of interim studies. In keeping with our nonpartisan status, the articles will present the issues with a legislative perspective, but without making judgments or editorializing. As always, we welcome your comments or suggestions.

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Government Evaluation Act: A New Approach to Agency Performance Reviews

The 117th Legislature enacted Public Law 1995, chapter 35, "The Government Evaluation Act" that established a new system for periodic review of the executive branch agencies and independent agencies of state government to evaluate their efficacy and performance. The Government Evaluation Act, found in title 3 M.R.S.A. sections 951-963, generally applies to agencies and independent agencies that either receive money from the General Fund or that are established, created or incorporated by statute.

The Government Evaluation Act replaces the functions of the former legislative Audit and Program Review Committee which was eliminated in 1994. This new system of agency review differs from the previous audit process in the following four areas.

1. The legislative committee having jurisdiction over the agency or department conducts the review rather than the review being conducted by a separate audit and program review committee.
2. Much of the initial evaluation work and supporting documents is prepared by the agency or department being reviewed rather than by the legislative committee and staff.
3. The evaluation process incorporates other ongoing efforts at government performance improvement, including performance budgeting, strategic planning, and rule-making review.

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4. The evaluation process is designed to allow the Legislature a greater degree of flexibility in determining the level of detail in an evaluation report and subsequent assessment by the committee. This allows the committees to set priorities for review and decide those agencies or programs that require greater scrutiny.

Steps in the Government Evaluation Process

I. Committee Authorization for Agency Review

Each legislative committee has the responsibility to determine the review schedule for those agencies and departments that fall within its jurisdiction. This review schedule is established in accordance with the Government Evaluation Act's recommended review schedule (3 MRSA § 959) and upon approval of both financial and staff resources by the Legislative Council by **April 1st** of the first regular session.

Under the Government Evaluation Act, the committee of jurisdiction may waive, postpone, or accelerate a review. With a 2/3 vote of the committee members, a committee has the following alternatives with regard to an agency review:

- A. Exempt an agency or independent agency from review and establish a new review date;
- B. Establish a modified review process in

which an agency or independent agency may be asked to provide less information than the minimum required by the Act or additional information; or

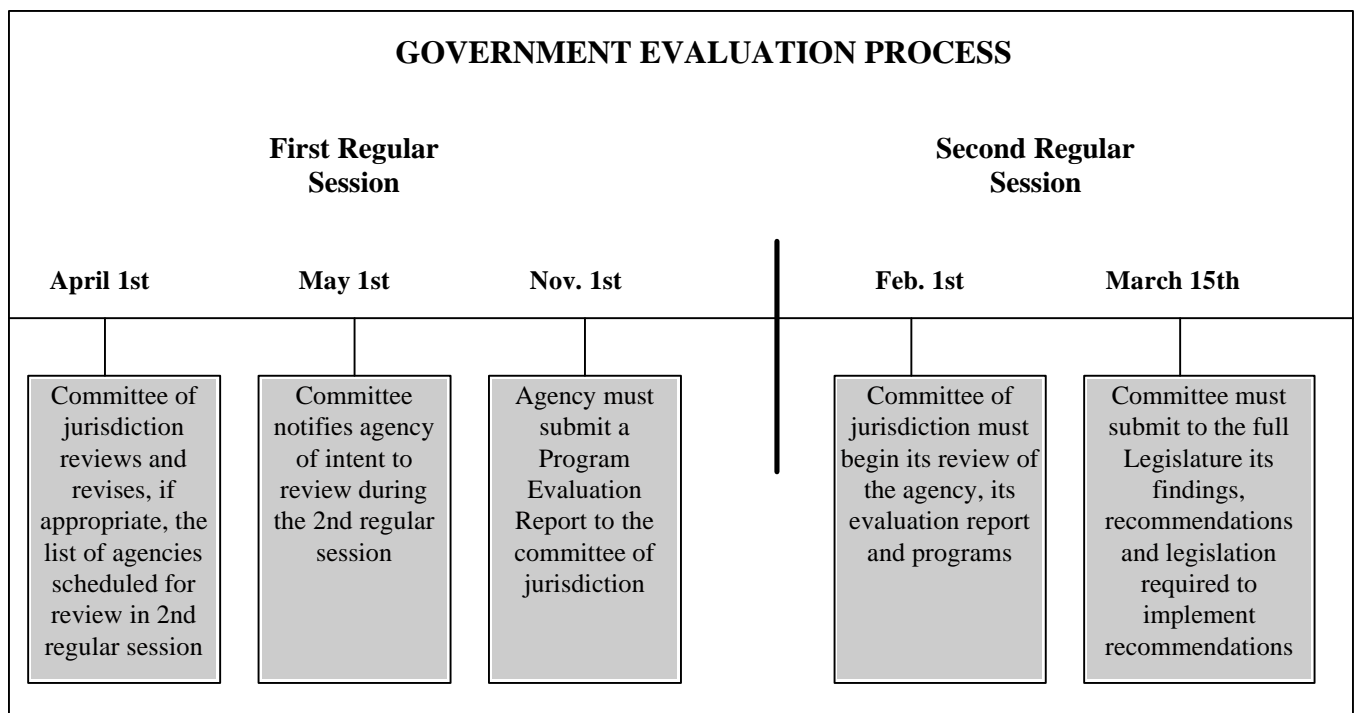
C. Add an additional agency or independent agency for review, except that an agency that has been reviewed in accordance with the Government Evaluation Act in the legislative session immediately preceding the current legislative session may not be added for review.

II. Agency Notification of Review

Once the committee establishes its review schedule, it provides each affected agency with a written notice of its intent to review an agency by no later than **May 1st** of the first regular session of the Legislature.

III. Agency Submission of Program Evaluation Report

Once an agency is notified of the committee of jurisdiction's intent to review, the agency prepares and submits a program evaluation report to the Legislature through the committee of jurisdiction. This report must be submitted by the agency no later than **November 1st** prior to the start of the second regular



session of the Legislature. The program evaluation report must include the following items:

- A. Enabling or authorizing legislation (state and federal);
- B. Description of each program including priorities, goals and performance criteria, timetables or other benchmarks and success in meeting goals, and reasons for failure and corrective measures taken;
- C. Organizational structure, position counts, and job classifications;
- D. Compliance with federal and state safety and health laws, ADA, OSHA, workers' compensation, and affirmative action requirements;
- E. A 10 year financial summary;
- F. Regulatory agenda and summary of rules adopted;
- G. Areas where efforts have been coordinated with other agencies or where they could be;
- H. Constituencies served by the agency, noting any changes or projected changes;
- I. Efforts at alternative service delivery systems, including privatization;
- J. Emerging issues for the agency; and
- K. Any other information specifically requested by the committee of jurisdiction.

IV. Agency Review Conducted

The committee of jurisdiction begins its agency review process no later than **February 1st** of the second regular session of the Legislature. The review is normally conducted during the legislative session. The agency review may include, but is not limited to, the following:

- A. Evaluation of the agency's program evaluation report;
- B. Extent to which the agency operates in accordance with its legislative authority; or
- C. The degree of success achieved by the agency in meeting its statutory and administrative mandates.

V. Submittal of Committee Report

The committee has until **March 15th** of the second regular session of the Legislature to complete its initial review and submit its findings, administrative recommendations, or legislation required to implement recommendations made as a result of its review, analysis, and evaluation of an agency.

VI. Follow-up review

The committee of jurisdiction has the option of establishing in its final report of the agency review a specified time to further review the progress an agency has made in meeting the recommendations of the committee report. This follow-up review may include:

- A. written progress reports;
- B. hearings with the agency and committee; or
- C. any other method approved by the committee in its final report.

Committee Actions on Independent Agencies

Following the committee of jurisdiction's review, analysis, and evaluation of an independent agency, the committee may recommend to the Legislature that the independent agency be terminated. If the committee does recommend this action, and the full Legislature agrees, the independent agency may be given a grace period of not more than one year from the effective date of the legislation terminating the agency, in which to complete its business. During this grace period, the statutory powers and duties of the independent agency are not limited or reduced.

It is the responsibility of the Legislature to determine for any terminated independent agency the disposition of the following:

- A. all property, including land, buildings, equipment and supplies used by the independent agency;
- B. all funds remaining in any account of the independent agency; and
- C. all records resulting from the activities of the independent agency.

Once the grace period has expired, the independent agency ceases its activities and terminates.

Agency Review Schedule for the 118th Legislature

The following is a summary of executive agencies and independent agencies determined by the legislative committees during the First Regular Session of the 118th Legislature to be reviewed during the Second Regular Session.

Committee of jurisdiction	Agency to be reviewed
Agriculture, Conservation & Forestry	<ul style="list-style-type: none">• Agriculture, Food & Rural Resources• Baxter State Park Authority

Committee of jurisdiction	Agency to be reviewed
Business and Economic Development	<ul style="list-style-type: none"> • Community and Economic Development • Maine Development Foundation • Professional and Financial Regulation (jointly with Banking and Insurance Committee)
Education and Cultural Affairs	<ul style="list-style-type: none"> • Education • Telecommunications Relay Board
Human Resources	<ul style="list-style-type: none"> • Alcohol and Drug Abuse Planning Committee • Office of Substance Abuse
Inland Fisheries and Wildlife	<ul style="list-style-type: none"> • Inland Fisheries and Wildlife
Labor	<ul style="list-style-type: none"> • Maine State Retirement System
Marine Resources	<ul style="list-style-type: none"> • Marine Resources
Natural Resources	<ul style="list-style-type: none"> • Department of Environmental Protection • Board of Environmental Protection
State and Local Government	<ul style="list-style-type: none"> • Capitol Planning Commission
Utilities and Energy	<ul style="list-style-type: none"> • Public Advocate

For more information about the Government Evaluation Act and schedules for agency reviews, please contact the Office of Policy and Legal Analysis at 287-1670.

Did You Know?.....



The University of Maine was originally established as the State College of Agriculture and the Mechanic Arts. The University is a land grant and sea grant institution and was created when the Morrill Act was signed into federal law under the Lincoln Administration in 1862.



Aroostook County, with 6,453 square miles of land area, is by far the largest of Maine's 16 counties. It has a greater land area than that of Connecticut and Rhode Island combined. Sagadahoc County is Maine's smallest county, with 250 square miles of land area. The average size of a Maine county is roughly 1,929 square miles.



Maine's Scarlet Letter Law Found in Violation of Constitution by Federal Court

The League of Women Voters of Maine, Elizabeth H. Mitchell and Philip E. Harriman, Plaintiffs v. Dan A. Gwadosky and Andrew Ketterer, Defendants and U.S. Term Limits, Inc., On Our Terms-Campaign Committee, John M. Michael and Belinda A. Gerry, Intervenor Defendants

No. 97-CV-1
United States District Court, D. Maine
F.Supp. 1997 WL 292121 (D.Me.)
May 19, 1997

At the November 1996 election, Maine voters passed the initiated referendum: "Do you want Maine to require candidates and elected officials to show support for Congressional term limits or have their refusal printed on the ballot?" In December, Governor Angus King proclaimed the passage of the measure and the law took effect January 3, 1997.

The Act is similar to measures adopted in other states. It includes a lengthy preamble and a draft term limits amendment to the U.S. Constitution. The proposed Congressional term limits are essentially three terms in the House and two terms in the Senate. The Act directs Maine's U.S. Congressional delega-

tion, State legislative delegation and Governor to use all of their "delegated powers" to enact the proposed amendment. The Secretary of State is instructed to take all necessary steps to place "violated voter instruction on term limits" in capital letters, on the ballot, next to the name of any member of Congress, state legislator or Governor who fails to undertake certain actions in support of the proposed amendment. The Act lists examples of actions and nonactions that would warrant the labeling. It also requires all nonincumbent candidates to either sign a pledge to support the proposed amendment in all ways required by the Act or have the phrase "refused to pledge support for term limits" printed in capital letters next to their names on all ballots for office.

The Act was presented to the Legislature under the direct initiative of legislation provision of the Maine Constitution. Prior to sending the measure to the people, the 117th Legislature asked for an advisory opinion from the Maine Supreme Judicial Court Justices concerning the constitutionality of the measure. One of the four questions propounded by the House of Representatives focused on the constitutionality of voters of the State of Maine, by means of initiated legislation, directing the elected Maine federal and state officials to use their powers to make application to Congress for a Constitutional Convention. Four of the seven justices advised that, under Article V of the U.S. Constitution, the voters do not have the power to propose a constitutional amendment. (The other three justices found the request for an opinion was premature and declined to answer this question, believing that because the initiated question must be submitted to the voters as written if not enacted by the Legislature, a "solemn occasion" authorizing an advisory opinion of the justices did not exist.) Because the 117th Legislature did not adopt the measure, it was placed on the ballot as a referendum question in the 1996 general election.

The League of Women Voters of Maine, Elizabeth H. Mitchell (Speaker of the Maine House of Representatives - D) and Philip E. Harriman (Senator - R) filed a complaint in federal court alleging that the Act violates Article V, the First Amendment and the Fifth Amendment of the U.S. Constitution, and requested an injunction against the governmental defendants (Dan Gwadosky as the Maine Secretary of State and Andrew Ketterer as the Maine Attorney General).

The U.S. District Court for the District of Maine reviewed state court decisions from California and Montana, which found proposed laws that coerce their state legislatures into applying to the U.S. Congress to call a Constitutional Convention to be un-

constitutional, and Arkansas, which struck down a ballot labeling law that was "substantively identical" to the Maine Act. The court also relied upon two U.S. Supreme Court decisions interpreting Article V of the U.S. Constitution with regard to allowing the voters, by referendum, to amend the Constitution.

The federal District Court found that the Act's ballot labeling provisions effectively coerce Maine's elected officials in violation of Article V of the Constitution and struck down the Act.

Postdate: An appeal was filed by the intervenor-defendants. However, before a ruling was made, the intervenor-defendants withdrew their appeal.

118th Legislative Session Bill Statistics

A total of 1,905 bills were introduced in the First Regular and First Special Sessions of the 118th Legislature. The table below summarizes statistical information about the bills considered by the Legislature this past session.

	Number of Bills	Percent of Total
Bills Introduced	1,905	100%
Bills Enacted or Finally Passed	707	37.2%
• Public Laws	563	29.6%
• Private and Special Laws	58	3%
• Resolves	85	4.5%
• Constitutional Resolutions	1	0.1%
Bills Vetoed or held by the Governor	8	0.4%

Committee Actions

	Number of Bills	Percent of Total
Total bills referred to committees	1809	94.9%
• Total bills reported out	1720	
• Bills carried over	170	8.9%
Unanimous Committee Reports	1,370	79.7%
• Ought to Pass	127	7.4%

	Number of Bills	Percent of Total
• Ought to Pass As Amended	458	26.6%
• Ought to Pass in New Draft	2	0.1%
• Ought Not to Pass	783	45.5%
Divided Reports	350	20.3%
Major Substantive Rules Reviewed	11	100%
• Authorized Without Changes	7	63.6%
• Authorized With Changes	4	36.4%
• Not Authorized	0	0%

The bills carried over from the First Regular and First Special Sessions of the 118th Legislature will allow the committees to gather information and more fully review the policy and legal issues posed by the bills. Some of these issues include: animal welfare, forest practices, medical licensing, school construction, state liquor stores and economic development.

The Legislative Information Office (287-1692) and OPLA have a list of bills carried over. In addition, OPLA has prepared a summary of each bill considered by the policy committees during the 118th Legislature First Regular and First Special Sessions. If you would like a copy of the list of bills carried over or a copy of bill summaries for each committee, please contact the office at 287-1670.



Date for Cloture Set

The Legislative Council has established **Monday, October 6, 1997** as the date for cloture for bill requests for the Second Regular Session. The titles and summaries for bills proposed by legislators must be submitted to the Revisor's Office by 5:00 p.m. that day. The Legislative Council will meet on October 27, 1997 to consider and vote on bill requests. Unlike the First Regular Session, for the Second Regular Session the Maine Constitution establishes criteria for the introduction of bills. Legislative business conducted during the Second Regular Session is limited to budgetary matters, Governor's bills, legislation of an emergency nature, carry overs, study legislation and initiated bills. If you have any questions, please con-

tact the Revisor of Statutes at 287-1650 or the Office of Policy and Legal Analysis at 287-1670.

Internet Intersection

Internet Search Tools: Engines vs. Directories

Along with the rapid expansion of information available on the Internet, tools for searching for information also have increased dramatically. Is it more efficient to search the Web using a search engine, directory or combination of the two?

In general terms, search engines utilize keyword searching, meaning a specific query is entered and the engine searches the entire text of available databases for the selected keywords. This type of searching is most useful to the researcher with a specific interest in a particular word, phrase or term. One downside of the keyword search is the enormous list of "hits" queries often produced.

A directory search tool, on the other hand, provides Web surfers with a more direct route to a particular subject area by searching by subject indices rather than keywords throughout each document. The output of a directory search often begins with a general subject heading and follows with more specific sub-headings.

For an in-depth look at ways to search the Internet and reviews of engines and directories see *How to Search the World Wide Web: A Tutorial and Guide for Beginners*

(<http://www.ultranet.com/~egrilib/tutor.htm>)



Policy and Government

U.S. Census Bureau: How many people currently live in the United States? Quick access to social, economic and demographic information including population statistics and current economic indicators.

<http://www.census.gov>

State and Local Government, A Library of Congress Internet Resource Page: Provides indices for state and local government information, state maps, and other resources including the full text of state statutes.

<http://lcweb.loc.gov/global/stat>

Thomas: Federal legislation from 1973 to present, as well

as links to other governmental information.

<http://thomas.loc.gov/>

Provides links to "hot" topics in government by subject.

<http://thomas.loc.gov/home/html.arc/hot-subj.html>

United Nations: For those interested in international law issues. The site also covers the following topics: peace and security, economic and social development, human rights, and humanitarian affairs.

<http://www.un.org/>

White House: Find out what's happening at the President's headquarters. The site includes a briefing room which provides press releases, hot topics and miscellaneous federal government statistics.

<http://www.whitehouse.gov/WH/Welcome.html>

United States Code: Search the federal statutes in force as of January 16, 1996 by title. Also assists with tracking recent amendments to the U.S. Code.

<http://www.law.cornell.edu/uscode/>



Maine State Legislature

The State of Maine statutes are now available through the Legislature's homepage.

<http://www.state.me.us/legis>

Office of Policy & Legal Analysis: Provides access to Legislative reports, bill summaries, committee jurisdictions, quarterly newsletter, and study commission information.

<http://www.state.me.us/legis/opla>

Law and Legislative Reference Library: Provides access to URSUS catalog, collections information, reference information, legislative history instructions and interlibrary loan information. The latest addition includes lists of Justices for the Maine Supreme Judicial Court and ME Attorney Generals, both from 1820 to present.

<http://www.state.me.us/legis/lawlib>



Technology

Multi-Engine Search Tool--Dogpile: Allows simultaneous searches on fourteen of the Web's most popular search tools. Multi-engine search tools eliminate the need to input separate queries in each engine.

<http://www.dogpile.com/>



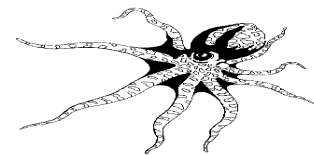
News

CNN Interactive: Latest headline U.S. and world news reports. This highly interactive page offers various multimedia options.

<http://www.cnn.com>

The New York Times: Keep up with the latest book reviews. Although the Web version of the Times requires registration and the use of a password, the service is free charge.

<http://www.nytimes.com>



General Interest

Gulf of Maine Aquarium: This virtual aquarium offers a glimpse of the living creatures found within the Gulf of Maine and its surrounding watershed.

<http://www.octopus.gma.org>



OPLA PUBLICATIONS

A listing of study reports of legislative committees and commissions categorized by year is available from OPLA. For printed copies of any of these publications please contact the Office of Policy and Legal Analysis 13 State House Station, Augusta, Maine 04333 (207-625-1670) or stop by Rooms 101/107 of the State House. Legislators and members of the public may request a copy at no charge. Additional copies of the publications are available at nominal cost. In addition, many of the legislative studies staffed by OPLA during the 117th Legislature are available on the OPLA website <http://www.state.me.us/legis/opla>

The following current publications are now available:

- **Summaries of bills from the 118th Legislature First Regular and First Special Sessions** - Summarizes all legislation considered by the 15 OPLA

staffed Joint Standing Committees of the Legislature and describes bills, committee amendments, other relevant amendments and the final action taken on each bill. There are also copies of bill summaries for each individual joint standing committee available. Bill summaries can also be found on the OPLA website.

States on the Internet

This section updates legislative information available on the Web. Please note that Maine's state laws are now available on the Internet. They can be found by accessing the Legislature's homepage at <http://www.state.me.us/legis>. Two other states, South Dakota and Utah, have recently added statutes and bill text/status to their websites. Of the previous states offering legislative information on the Web, two have added statutes, two have added bill text/status and five have added session laws. Access the Library of Congress' State and Local Governments page at <http://lcweb.loc.gov/global/state/> for more information.

The following 35 states have their **statutes** available on the Internet:

AK	FL	KY	NE	OK	VT
AZ	GA	ME	NV	PA	VA
CA	ID	MD	NJ	RI	WA
CO	IN	MN	NM	SD	WI
CT	IA	MO	NY	TX	WY
CO	KS	MT	OH	UT	

The following 41 states have **bill information** available on the Internet:

AK	GA	MD	NV	SD	WY
AZ	HI	MA	NH	TN	
AR	ID	MI	NJ	TX	
CA	IN	MN	NM	UT	
CO	IA	MS	NC	VT	
CT	KS	MO	NY	VA	
DE	KY	MT	RI	WA	
FL	LA	NE	SC	WI	

The following 19 states have their **session laws** available on the Internet:

AK	CA	GA	MN	NY	PA
AZ	CO	KS	NH	NC	RI
AR	CT	MA	NM	OH	SC
WI					



Legislative Studies

A total of thirty-two legislative studies were approved by the Legislature this past session. These studies are the result of legislation considered during the First Regular and First Special Sessions of the 118th Legislature. In addition, five studies are being conducted by individual committees to study a particular topic. Most of these studies will be completed by the beginning of the Second Regular Session.

Study	Report Date
Banking and Insurance Committee- Meetings on Protecting Privacy of Genetic Information	---
Commission to Designate Outstanding Citizens and Display Their Portraits	1/15/98
Commission to Examine Rate Setting and Financing of Long Term Care Facilities	12/15/97
Commission to Study Certificate of Need Laws	12/1/97
Commission to Study Effects of Government Regulations and Health Insurance Costs on Small Business	1/1/98
Commission to Study Funding and Distribution of Assistive Equipment for Disabled	1/1/98
Commission to Study Insurance Fraud	1/1/98
Commission to Study Use of Pharmaceuticals	1/1/98
Commission to Study Restructuring of State's Fiscal Policies to Promote Development of High Technology Industry	1/1/98
Joint Select Committee on Research & Development	1/1/98
Joint Select Committee to Oversee Maine Yankee Atomic Power Company	1/31/98

Study	Report Date
Legislative Review of Revisions to the State's Clean Air Strategy	As needed
Joint Commission on Children's Health Care	12/15/97
Natural Resources Committee Review of DEP's Motor Vehicle Inspection Program	1/1/98
Select Committee to Study the Health Effects of Reformulated Gasoline	12/15/97
Joint Study of Privatization of State Liquor Stores	---
Joint Study of the Citizen Initiative Process	---
State Compensation Commission	1/1/98
Study of Adequacy of Services to Persons with Mental Retardation	1/1/98
Study of Unemployment Compensation System As It Relates to the Working Poor	1/1/98
Study on Cost Effectiveness of the Child Development Services System	1/1/98
Joint Study Regarding Workers' Compensation & Occupational Disease Law	1/5/98
Study the Scope of the Juvenile Justice Problems and Services	11/1/97
Study to Plan for Services for Children With Mental Health Needs	12/15/97
Task Force on Improving Access to Prescription Drugs for the Elderly	1/15/98
Task Force on Information Technology in the Public Sector	1/1/98
Task Force on Registration of In-home Personal Care and Support Workers	1/1/98
Task Force on the Production and Issuance of Registration Plates	During Second Regular Session
Task Force on Regional Service Center Communities	1/1/98
Task Force on State and Federal Tax Filing	12/1/99
Task Force Relating to Maine Mobility Fund	1/1/98
Task Force to Develop a Single Payment System for Small Businesses	1/1/98
Task Force to Review Applied Technology Regions and Centers	1/1/98
Task Force to Study Equal Economic Opportunity	1/1/98
Task Force to Study Feasibility of Single Claims Processing System	1/1/98
Task Force to Study Strategies to Support Parents as Children's First Teachers	12/1/97
Work Group to Examine the Legal Rights of Children who Testify in Sexual Abuse Cases	1/1/98

If you have any questions concerning a particular study, please contact the Office of Policy and Legal Analysis at 287-1670 for further information.

A Word About OPLA

The Office of Policy and Legal Analysis (OPLA) is one of several nonpartisan offices of the Maine State Legislature. It operates under the auspices of the Legislative Council. The office provides professional staff assistance to the joint standing and select committees, including provision of policy and legal research and analysis, coordination of the committee process, drafting of bills and amendments, statutory analysis of budget bills in cooperation with the Office of Fiscal and Program Review and preparation of legislative proposals, reports and recommendations. Following is the mission of the office:

OPLA Mission

The Office of Policy and Legal Analysis assists, in a nonpartisan and responsive manner, the Maine Legislature, its committees and its members in fulfilling the Legislature's mission by providing objective information, impartial legal and policy analysis, and assisting in formulating and drafting legislative proposals, reports and recommendations.

OPLA~Notes

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David E. Boulter, Director
Editor: Darlene Shores Lynch

We welcome your comments and suggestions. Contact the Office of Policy and Legal Analysis by writing to 13 State House Station, Augusta, Maine 04333; calling 287-1670; or stopping by Rooms 101/107/135 of the State House.

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